

Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LINDA GILMER,

Plaintiff,

v.

CENTENE CORPORATION ET AL

Defendants.

No. 3:16-cv-05685-BHS

MOTION TO DISMISS WITHOUT
PREJUDICE

NOTE ON MOTION CALENDAR:
Friday, March 17, 2017

Pursuant to Fed. R. Civ. P. 41(a)(2), Plaintiff Linda Gilmer hereby moves to dismiss Plaintiff's Complaint without prejudice.

I. FACTS AND PROCEDURAL POSTURE

Plaintiff's Complaint was filed on May 6, 2016, in the United States District Court for the Western District of Missouri, Western Division, asserting a federal cause of action for wrongful termination under the Sarbanes-Oxley Act, 18 U.S.C. 1541A (Dkt. 1). Plaintiff's Complaint was transferred to this Court at Defendants' request and with Plaintiff's consent on August 3, 2016 (Dkt. 19). Defendants' Answers to Plaintiff's Complaint were filed on December 20, 2016 (Dkts. 31, 32, and 33).

In January, 2017, Plaintiff's counsel notified the Defendants that Plaintiff intends to voluntarily dismiss this action, and sent a proposed stipulation to avoid the need for this motion. (*See* Dkts. 37, 38). Based on the planned dismissal of this action, the parties have not conferred as required by Fed. R. Civ. P. 26(f). Neither have the parties exchanged the disclosures required

1 by Fed. R. Civ. P. 26(a)(1), or exchanged initial written discovery requests of any type. (*See*
 2 Dkts. 37, 38).

3 Upon dismissal of her federal claim, this action will be resolved since there are no state
 4 claims. And in any event, even if there were such claims, in an *en banc* opinion, the Ninth
 5 Circuit emphasized that, “in the usual case in which all federal-law claims are eliminated before
 6 trial, the balance of factors ... will point toward declining to exercise jurisdiction over the
 7 remaining state-law claims.” *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir.),
 8 supplemented, 121 F.3d 714 (9th Cir. 1997) (*en banc*) (citation omitted).

9 Plaintiff intends to proceed in state court with only state-law claims, not with any federal
 10 claims. The Ninth Circuit has recognized a plaintiff’s entitlement to dismiss federal claims to
 11 pursue state claims in state court. *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001) (“Smith
 12 was entitled to abandon the federal class action and federal claims after deciding that litigation
 13 on state law claims in state court was preferable....”)

14 II. ARGUMENT

15 Defendants will not suffer plain legal prejudice as a result of the voluntary dismissal of
 16 Plaintiff’s claims in this forum without prejudice.

17 “Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s
 18 request only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2).
 19 “A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a
 20 defendant can show that it will suffer some plain legal prejudice as a result.” *Smith v. Lenches*,
 21 263 F.3d 972, 975 (9th Cir. 2001) (“the need to defend against state law claims in state court is
 22 not ‘plain legal prejudice’ arising from voluntary dismissal of the federal claims in the district
 23 court”). “Uncertainty because a dispute remains unresolved” or because “the threat of future
 24 litigation...causes uncertainty” does not result in plain legal prejudice. *Westlands Water Dist. v.*
 25 *United States*, 100 F.3d 94, 96-97 (9th Cir. 1996). “Also, plain legal prejudice does not result
 26 merely because the defendant will be inconvenienced by having to defend in another forum or
 27

1 where a plaintiff would gain a tactical advantage by that dismissal.” *Lenches*, 263 F.3d at 976
2 (citing *Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir. 1982)).

3 In sum, there is no legitimate barrier to granting the Plaintiff’s request for voluntary
4 dismissal without prejudice.

5 **III. CONCLUSION**

6 WHEREFORE, Plaintiff respectfully requests that the Court enter an Order dismissing
7 this action without prejudice.

8
9 DATED this 17th day of February, 2017.

10 MacDONALD HOAGUE & BAYLESS

11
12 By /s/ Jesse Wing

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CERTIFICATE OF SERVICE

I certify that on the date noted below I electronically filed this document entitled
MOTION TO DISMISS WITHOUT PREJUDICE with the Clerk of the Court using the
CM/ECF system which will send notification of such filing to the following persons:

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DATED this 17th day of February, 2017, at Seattle, Washington.

/s/ Esmeralda Valenzuela
Esmeralda Valenzuela, Legal Assistant